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Responsible Openness: An Imperative for the U.S. Nuclear Regulatory Commission

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Good morning, ladies and gentlemen. I am pleased to have the opportunity to address this workshop on "Investing in Public Trust."

My purpose today is to describe why responsible openness is important for the processes of the U.S. Nuclear Regulatory Commission (NRC) and to explain what we are doing to achieve it. This workshop shows that many countries consider it important to keep the public informed about the work of their nuclear regulatory agencies. I am sure that we can all learn from each others' perspectives and experiences. I hope to contribute to this exchange and to learn from it.

Why Openness?

First, let me set the stage with a question: why openness? The regulation of the civilian uses of radioactive materials is obviously a highly technical activity, involving scientific analysis and engineering judgment that most members of the public at large cannot be expected to follow at the level of technical detail. It might be easy to conclude that, since most of the public does not understand, for example, conditional core damage frequency, special treatment requirements, or emergency core cooling systems, it is pointless to involve the public in the everyday intricacies of nuclear regulation. I think that such a conclusion is wrong.

In the United States and in most other countries, the operations of nuclear facilities are a controversial subject. There are segments of our population that are concerned about the risks -- real and imagined -- that the technology presents to the public health, safety and the environment. Others

worry about the collective ability to safeguard nuclear materials so that untoward uses of them are avoided. And others are worried about the risks attendant to nuclear waste and the legacy that these materials present to future generations. Many of those holding strong views on such matters may not be technically knowledgeable and cannot engage with the regulatory agency at the level of engineering sophistication with which our staffs are most comfortable. Somehow, however, these concerns must be confronted.

I mean the words “must be confronted” quite literally. Although our regulatory decisions may have a veneer of technical detail, at core they usually implicate embedded social judgments about the acceptability of risk and the balance of costs and benefits. These social judgments are matters on which the public has a stake and on which the affected public is entitled to have its concerns addressed. There is thus a substantive imperative for the regulator to involve the public in its decision-making. Indeed, the public may on occasion bring to light issues that deserve careful attention that otherwise would not have been examined.

Equally important, there is a procedural imperative to make such licensing decisions through processes accessible to the public. In the absence of such transparency, skeptics who do not have access to the regulatory process cannot be blamed for suspicions that their concerns have not been considered. No matter how careful a job that the regulator may do, if the work is performed behind a veil of secrecy, the public will not have confidence that the result is fair, objective, honest, or in the public interest. There will always be the corrosive suspicion that decisions made outside the sight of the public serve to protect those favored by the decisions, to conceal dangers, or to cloak imprudent, unethical, or illegal acts.

There is a practical consequence of the failure to build public confidence in the validity of regulatory decisions: the invitation for intrusion by other institutions of government to “correct” the perceived inadequacies of regulatory decision-making. In the case of the United States, the situation may be aggravated by a philosophy of government that stems from the origins of our country.

As many of you know, the government of the United States is organized around a system of checks and balances, reflecting our Founding Fathers’ mistrust of placing unrestrained power in the hands of any one governmental entity. The system was designed to create tensions among the branches of government. To the extent that the public believes that the decision-making by any branch is improper, it may seek correction elsewhere. Thus, the decisions of the Nuclear Regulatory Commission are subject to review in the courts, and our policy decisions may be examined and modified by the Congress. We invite exactly such intrusion on our decision-making if we do not demonstrate through open processes that our decisions are sound. Any other course invites concern by the public, thereby encouraging the public to seek redress in other branches of government, and breeds skepticism in those other branches as to the validity of our actions.

The dangers that attend the failure to heed the need for openness are reflected in the history of nuclear matters in the U.S. At one time the entirety of nuclear enterprise in the United States – both weapons development and commercial applications – was under the purview of the Atomic Energy Commission (AEC). In 1975, the AEC itself underwent a fission event, with the regulatory activities becoming the responsibility of the NRC and with the weapons-related activities eventually becoming the responsibility of the Department of Energy (DOE). Of course, the military-related activities of the

AEC and then the DOE were shrouded in secrecy but, as time went on, the culture of secrecy in those agencies persisted even in matters that were distant from weapons.

Starting in the late 1980s, there have been slowly emerging revelations about past activities: involuntary human testing involving nuclear materials, environmental releases exposing civilians about which the affected populations were never told, and waste practices that were flatly inconsistent with sound stewardship. Many of these activities would not have been undertaken, or certainly would have been curtailed, if the public had been informed about them in a timely fashion. Moreover, the failure of DOE and its predecessors to be open with the public about these events has caused the agency to be viewed by many with distrust and suspicion. This climate has had a destructive effect on the confidence of the public in the decisions of DOE. And the intrusion on DOE's powers by other branches has occurred: many of DOE's activities are subject to litigation or are supervised by the courts and Congress has created an independent agency, the Defense Nuclear Facility Safety Board, to review and comment publicly on DOE's stewardship of nuclear activities. The current management of DOE has made great strides to improve the public trust through aggressive efforts at openness and public interaction, but nonetheless the effectiveness of the agency has no doubt been constrained by the past history of unjustified secrecy.

The bottom line is that all regulators need to build public confidence in regulatory programs and decisions. We can earn that confidence only by treating all views fairly and openly, by analyzing data competently, and by resolving issues judiciously. And the public cannot know that we are doing these things unless it has open access to our processes. We cannot expect everyone to agree with our decisions, but we can aspire to show that we have addressed every legitimate issue fairly and thoroughly. To build public confidence, we must practice responsible openness.

Risk-Informed Regulation and Economic Deregulation

Let me bring this discussion down to earth with a specific example. Although the primary objective of the NRC is to protect public health and safety, we have established certain other performance goals. One of these goals is the reduction of unnecessary regulatory burden. Based on four decades of experience with operating nuclear power reactors and on improved techniques of probabilistic risk assessment, we now recognize that some regulations imposed in the past may not serve their intended safety purpose. When many of our regulations were originally designed, we did not have much practical experience with commercial reactors, so we generally proceeded very cautiously, relying on conservative engineering judgment and defense in depth.

We have learned much in the intervening years, however, and now recognize that some of our regulatory requirements may not be necessary to provide adequate protection of public health and safety. Where that is the case, we should revise or eliminate those regulations, since they are not required to achieve our mission. The identification of such regulations is one aspect of the program to risk-inform the NRC's regulatory program. (Of course, insights about risk can also reveal shortcomings in the current regulatory system and these are also being addressed.)

At the same time that the NRC is using insights about risk to examine the regulatory program, the U.S. is experiencing a dramatic change in the economic conditions within which the nuclear electric power industry operates. Until recently, the rates that generators received for their service were regulated, state by state. Licensees could readily recover the costs of meeting safety requirements in

the state-regulated rate base. Within the last year or two, however, many states have deregulated electricity prices and many more are expected to do so in the near future. The result is that nuclear electricity now must compete in an open market with other sources of electric power. The costs of our regulatory system now come directly off the economic bottom line, and affect the economic competitiveness of nuclear power.

Although the effort to risk-inform the regulatory system started long before the change in the economic climate, the juxtaposition of the two activities can invite skepticism. How is the public to be assured that the changes in safety regulations that we adopt are not merely intended to promote the economic interests of the industry? As a regulator, the NRC does not promote nuclear power; that is the responsibility of the Department of Energy. However, this fact does not prevent the question from being asked. And the only way we can satisfy the skeptics is by fully revealing the substance of our efforts to revise our regulatory program so as to show that our actions are reasonable and appropriate. Without an open process, the public cannot be assured that our focus is indeed on health and safety, as it must be, and not on the financial interests of our licensees.

Let me mention one other demand for openness that arises from the current economic changes. The new regime of economic competitiveness holds the danger of creating an environment in which heightened concerns about nuclear power might fester if not addressed forthrightly. Some may fear, for example, that the new economic environment creates incentives for licensees to cut corners on safety in order to improve their competitive position. It is the responsibility of the regulator to assure that exactly such actions are not taking place. And it is equally the responsibility of the regulator to keep the public informed of our findings so that there can be an accurate factual foundation for the public's perceptions. Fortunately, our review to date has shown the improved economic performance and improved safety performance go hand-in-hand. The changed economic environment in fact may be providing increased incentives for safety because a safe plant is also one that is reliable. Regardless of the ultimate resolution of the tension or complementarity of safety and economic competitiveness, however, the regulator is responsible for assuring that the public is fully and accurately informed of licensee performance so that needless fears are avoided and appropriate pressures are placed on those licensees whose performance falls short.

Spent Fuel

Let me illustrate the immeasurable value of openness with another example: the challenge of regulating the management of spent fuel wastes. Everyone in this audience appreciates this challenge, whether the issue is on-site storage, off-site surface storage, or deep geological disposal. NRC's role is to license these activities in response to applications from operators. For one of these options, the proposed deep repository at Yucca Mountain, two other federal agencies are involved. The Environmental Protection Agency (EPA) will promulgate a standard to protect public health, and the Department of Energy (DOE) will, if the site is deemed suitable, apply for a license to construct and operate the repository. The NRC will decide whether to license the repository using technical and licensing criteria it has developed to implement EPA's standard.

Many of the citizens in the affected states are gravely concerned about the impacts of a repository. As a result, any decision about the management of nuclear wastes must be made in the cauldron of intense public controversy. Under these circumstances, it will be easy to stoke passions that a decision does not reflect a legitimate, forthright examination of the issues. In my view openness

is the only way to combat corrosive suspicions that the decision has not been made on the basis of the technical merits. Openness may not be sufficient to assure acceptance of our decision, but complete transparency in decision-making is essential if there is to be any possibility of achieving a stable outcome.

Openness in Practice

I have tried thus far to provide an explanation for the importance of openness. Let me now turn to some of the ways in the which the NRC conducts its business in order to achieve openness.

First, the Commission operates under laws governing administrative procedures that promote government in the sunshine. For example, these laws require that we provide public access to the documents considered in decision making. We thus maintain a Public Document Room in which public materials are made available. We are also trying to harness information technology so that these materials will be more readily available electronically, offering the prospect for timely and easy access throughout the world. This task has proven to be a formidable one, but I am hopeful that our systems will soon meet our expectations. Our administrative procedures also require the Commissioners to meet in public and to provide full explanations of their decisions for the public record. The public is encouraged to participate in our meetings.

Second, our staff routinely conducts both formal and informal public meetings in the field so that the public has opportunities to learn about proposed actions and to express views about the proposals and the resulting NRC decisions. Such meetings are held in the affected communities, often in the evening, so that all segments of the public can participate. These meetings are extraordinarily popular and usually result in important, mutually informative exchanges.

Current Initiatives

We are also undertaking several initiatives to enhance our openness. One of these is to provide formal training for both our managers and staff on the art of conducting public meetings. The ability to organize and conduct meetings that promote open, effective communications is not a natural one, but it is one that can be learned. Because public meetings often address controversial issues, our staff must be able to provide participants with clear and accurate information. Moreover, the staff must be mindful of something that my wife often tells me: half of communication is listening (or, at least, listening to her). And thus the staff must be trained to listen carefully and thoughtfully and to react responsively to the views and concerns of others. Our new training courses are aimed at reenforcing a cultural climate of openness and providing our staff with the skills to be responsible shepherds of honest open processes.

Another initiative is to develop explicit communications plans for important activities in our major programs, such as licensing, spent fuel storage, and inspection. The objective is to provide guidance to our staff who routinely work in the respective areas so their communications with the public are consistently thorough and complete. We want to avoid, for example, inadvertent omissions that could be misinterpreted as attempts to conceal information, thus needlessly creating suspicions. We have already used a communications plan to explain our response to the failure of a steam generator tube at the Indian Point 2 plant just north of New York City. The plan provided a useful

framework to guide public discussion of the relevant issues and to facilitate public access to the ongoing decision-making process.

Another initiative is to redesign the NRC's website. We recognize that the Internet has become an important vehicle for making information widely available. The feedback we have received has impressed us with the need to upgrade and redesign our site so that it is more user friendly, is more easily navigated, and provides a richer variety of current mission-related information about the NRC's regulatory activities.

Conclusion

In summary, let me reiterate my view that responsible openness is an essential ingredient in the stew that is regulatory decision-making. As conscientious public servants, we cannot be successful if we are seen as being secretive. Openness is all the more important for decisions in highly technical areas, because otherwise the public has scant opportunity to understand the issues or to participate in a meaningful way. Openness is the spice that helps to make difficult decisions more palatable.

The NRC historically has had a good record in this regard, but we are nonetheless working to improve our interactions with the public because improvement is always possible. We want the public to continue to have confidence that the NRC will carry out its mission to protect health and safety in the public interest, and we are investing in our staff and in programs to enhance that trust.

Trust, however, is a fragile commodity. Governmental organizations and their relations with the public they serve can be strengthened by trust -- or paralyzed by a lack of it. Responsible openness is the key to building and maintaining trust in regulatory programs.

Thank you for the opportunity to talk with you today. I look forward to our continuing discussions of this important topic.